Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier Compensation Regime	)	

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Leonard J. Kennedy
Senior Vice President and
General Counsel
Joel M. Margolis
Senior Corporate Counsel-Regulatory

NEXTEL COMMUNICATIONS, INC.
2001 Edmund Halley Drive
Reston, VA 20191

(703) 433-4000

Laura H. Phillips
Carlos M. Nalda

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

(202) 776-2000

Its Attorneys

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SUMMARY

Nextel strongly supports the Commission's initiative to examine intercarrier compensation issues and to determine whether bill and keep is a superior compensation model for the termination of telecommunications traffic. Given the complex nature of this objective and the multitude of issues surrounding intercarrier compensation, particularly the thorny jurisdictional issues surrounding landline interconnection, the Commission should address its proposed compensation reform in stages. The Commission should start first in the one area in which it has full substantive jurisdiction and plainly can make immediate progress -- the interconnection arrangements that exist among Commercial Mobile Radio Service ("CMRS") carriers and incumbent local exchange carriers ("ILECs").

CMRS carriers and ILECs currently waste enormous resources monitoring traffic and auditing and reconciling reciprocal compensation bills, when it would be far more efficient to employ a bill and keep model of compensation. For its part, Nextel's overall traffic exchanged with ILECs is coming closer to balance and a presumption in favor of bill and keep will allow Nextel and other carriers to devote limited resources to expanding networks and service offerings. Accordingly, Nextel urges the Commission to adopt bill and keep as the model for CMRS-ILEC interconnection to be applied as a default compensation arrangement when parties cannot agree on the reasonableness of alternative arrangements.

The Commission also should clarify its existing rules and adopt a uniform national CMRS-ILEC interconnection regime. Immediate action is necessary because ILECs unilaterally impose unreasonable results on their CMRS competitors merely by offering interconnection on a "take it or leave it" basis. ILECs have all the negotiating leverage, and CMRS providers continue to experience substantial difficulties in obtaining appropriate interconnection

arrangements. For example, many ILECs impose one-way access charges for the termination of CMRS traffic, despite explicit Commission guidance to the contrary. In this connection, the Commission should confirm that the Major Trading Area ("MTA") is the appropriate geographic area for CMRS traffic to receive reciprocal compensation treatment, and that indirect interconnection through transit traffic arrangements remains a permissible form of CMRS-ILEC interconnection. Clarification of these and other CMRS-ILEC interconnection rules, and establishment of a national CMRS-ILEC interconnection regime, are essential to prevent CMRS carriers from being whipsawed between federal rules and policies and a fifty-state patchwork of rules and policies focused primarily on protecting the interests of ILECs and their customers.

Although Nextel strongly supports a presumption in favor of bill and keep for the exchange of CMRS-ILEC traffic, the Commission should avoid adopting either theoretical model discussed its Notice of Proposed Rulemaking for dividing the "inter-network" costs of physical interconnection. Both of these models present significant implementation difficulties and would impose substantial unnecessary costs on CMRS carriers. The Commission also should reject ILEC calls for "pricing flexibility" to recover traffic sensitive costs of call termination if bill and keep is implemented. Such a proposal may lead to anticompetitive price discrimination on calls to CMRS providers or other carriers that cannot be tolerated.

In sum, Nextel believes that adopting a presumption in favor of bill and keep, particularly for CMRS-ILEC traffic within an MTA, will promote true facilities-based competition by eliminating the incentives and ability of ILECs to insist on inefficient interconnection arrangements. In the interim, however, the Commission should clarify its existing CMRS-ILEC interconnection rules and establish a uniform nationwide CMRS-ILEC interconnection regime to ensure that consumers enjoy the benefits of CMRS competition to the maximum extent possible.

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Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits these reply comments in response to the above-captioned Notice of Proposed Rulemaking.[1] In the *Notice*, the Federal Communications Commission ("FCC" or "Commission") reexamines the current intercarrier compensation regime, including interconnection arrangements that exist among Commercial Mobile Radio Service ("CMRS") providers and incumbent local exchange carriers ("ILECs"), to determine whether a bill and keep approach would serve the public interest. Nextel strongly supports the Commission's initiative, as do all other CMRS commenters. The Commission should move immediately to adopt uniform national rules for CMRS-ILEC interconnection that include an appropriate form of bill and keep for the exchange of CMRS-ILEC traffic.

I. INTRODUCTION

The Commission has embarked on an ambitious mission to determine whether it is feasible and in the public interest to rationalize the current diverse range of intercarrier interconnection and compensation schemes subject to state, federal and international law and regulation. Given the complex nature of this goal and the multitude of issues raised by various commenters, the Commission should address in stages its proposed compensation reform. The

[1] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (rel. April 27, 2001) ("*Notice*").

Commission should start first in the one area in which the Commission plainly can make immediate progress -- the interconnection arrangements that exist among CMRS carriers and ILECs. As set forth in Nextel's comments and the comments of other CMRS providers, the Commission should establish bill and keep as the model for CMRS-ILEC interconnection to be applied as a default compensation arrangement when parties cannot agree on the reasonableness of alternative arrangements. Such a regime would not only foster the growth of non-ILEC facilities-based networks, providing socially desirable network redundancy and heightened prospects for network survivability, it also would eliminate the wasteful use of resources now deployed to monitor and measure exchanged traffic and to bill and audit reciprocal symmetrical payment arrangements in place today. Assuming that bill and keep for CMRS-ILEC traffic exchange is configured appropriately, it will effectively eliminate the regulatory drag and uncertainty surrounding state-by-state interconnection negotiations and arbitrations, boosting the efficiency of both CMRS and ILECs.

There was virtually no opposition to the proposal that the Commission exercise its legal authority and take immediate action to adopt more efficient and pro-competitive rules governing CMRS-ILEC interconnection. Further, there is no legal impediment to a Commission decision to change its previously announced policy to impose the landline interconnection framework on CMRS-ILEC interconnection and replace it with a federal uniform policy subject to federal review and federal dispute resolution mechanisms.

There also are compelling policy reasons for immediate Commission action. Adopting bill and keep would have immediate, pro-competitive benefits for CMRS carriers and ILECs alike. Carriers should be permitted, however, to negotiate alternative compensation arrangements if alternative arrangements are acceptable to both parties.

As part of a plan for immediate reform, the FCC should reaffirm that the Major Trading Area ("MTA") is the relevant local calling area for the exchange of CMRS-ILEC traffic, regardless of the scope of landline networks and ILEC local calling areas and rate centers. Further, ILEC obligations to provide transit functions to cooperate in indirect interconnection arrangements with the payment of appropriate compensation must be reaffirmed. The Commission should also be plain that state commissions can no longer impose regulatory frameworks that allow ILECs to treat CMRS traffic legally entitled to reciprocal compensation as one-way access traffic. Finally, the Commission must reject ILEC attempts to gain an anticompetitive advantage by imposing discriminatory end-user charges under the guise of pricing "flexibility."

II. THE FCC SHOULD TAKE IMMEDIATE ACTION TO CLARIFY EXISTING RULES GOVERNING CMRS-ILEC INTERCONNECTION AND TO ADOPT A UNIFORM NATIONAL CMRS-ILEC INTERCONNECTION REGIME

The record of this proceeding establishes without question that CMRS providers continue to experience substantial difficulties in obtaining appropriate interconnection arrangements with ILECs. Given the history of CMRS interconnection with ILECs discussed at some length in Nextel's initial comments, this is not particularly surprising. There remain significant disparities in the CMRS carrier and ILEC negotiating power that symmetrical reciprocal compensation does not effectively address. These disparities stem from the fact that ILECs have not nearly the same need to establish reasonable interconnection arrangements with CMRS carriers as CMRS carriers need reasonable interconnection from ILECs. Further, ILECs have no real incentive to treat CMRS providers as true, facilities-based co-carriers because any concession given a CMRS

carrier may be viewed as eroding the ILEC's competitive position vis-à-vis the CMRS carrier.[2] Indeed, the comments demonstrate that CMRS carriers are experiencing problems in getting ILECs to honor current FCC interconnection requirements. For example, many small and rural ILECs are openly hostile to the FCC's CMRS-specific rules and many impose one-way access charges for the termination of CMRS traffic.[3] Similarly, SBC's comments highlight its policy of treating interconnected CMRS traffic originated and terminated within the MTA as one-way access traffic, despite explicit Commission guidance to the contrary.[4] Even state commissions have permitted ILECs to impose one-way, access-type CMRS termination charges that directly contravene the FCC's requirements.[5]

Thus, whatever else the Commission does on intercarrier compensation and interconnection reform, it should first take the opportunity to clarify the application of its existing CMRS-ILEC interconnection policies. Without immediate clarification, ILECs will continue unreasonable interconnection practices at the expense of CMRS carriers and their

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[2] Indeed, while the Bell Operating Company ILECs have a checkpoint and some incentive to open some access to their network functions as a precondition to receiving Commission approval under Section 271 to enter the in-region interexchange market, this incentive has not proved to be so strong that they have eagerly cooperated and agreed to arrangements that competitive carriers view to be reasonable and efficient. Non-Bell Operating Company ILECs that are already permitted to provide interexchange services have even less incentive to cooperate with CMRS carriers to achieve reasonable interconnection arrangements.

[3] *See* Comments of the Missouri Small Telephone Company Group at 9 ("MoSTCG Comments"); *see also* Comments of Ronan Telephone Company and Hot Springs Telephone Company at 8-9.

[4] *See* Comments of SBC Communications Inc. at 18-19 ("SBC and other ILECs have taken the position that they are entitled to be compensated for the additional cost of transporting traffic beyond the local exchange area to a single POI (point of interconnection) in a LATA.") ("SBC Comments").

[5] *See* Comments of the People of the State of California and the California Public Utilities Commission at 10-13 ("CAPUC Comments").

customers. The Commission simply cannot permit ILECs to continue to ignore its longstanding CMRS interconnection requirements.

In addition to clarifying its existing rules, the FCC should take immediate action to adopt an economically and administratively efficient regime for CMRS-ILEC interconnection. Not only does the Commission have the unique statutory authority to establish appropriate CMRS-ILEC interconnection regime, but asserting such authority will hasten the day when CMRS can become a true competitive alternative to landline service.

Some commenters suggest, however, that the Commission should delay the benefits of bill and keep for the exchange of CMRS –ILEC traffic and instead wait to adopt a comprehensive set of rules governing the numerous and diverse intercarrier compensation regimes under consideration in this proceeding. Postponing necessary reforms would be shortsighted and ignores the unique circumstances of CMRS-ILEC interconnection.

First, CMRS interconnection is undeniably a matter within the Commission's full and undivided substantive jurisdiction.[6] The only commenter that attempted to challenge this legal conclusion directly was the Public Utilities Commission of California ("CAPUC").[7] However, the CAPUC's analysis entirely ignores the legal effect of a very significant amendments to the Communications Act of 1934, namely, the 1993 revision to section 2(b) which provides the Commission with full substantive jurisdiction over regulation of CMRS providers, including matters related to CMRS interconnection. The CAPUC's analysis is fundamentally flawed in that it is nothing more than a rote application of the principles governing bifurcated federal-state

[6] *See, e.g.,* Comments of Nextel Communications, Inc. at 5-6 ("Nextel Comments"); Comments of Verizon Wireless at 5-8; Comments of the Cellular Telecommunications & Internet Association at 3-4.

[7] *See* CAPUC Comments at 8; Comments of Florida Public Service Commission at 2.

jurisdiction over landline carriers. The CAPUC analysis fails to account for the special nature of CMRS service recognized by Congress and increasingly recognized by the courts.[8]

The unique jurisdictional nature of CMRS provides the Commission with an opportunity to adopt bill and keep immediately as a framework for CMRS-ILEC interconnection. In the meantime, the Commission can work through the thorny jurisdictional issues many state commission and ILEC commenters have raised regarding any Commission mandate on bill and keep for landline traffic.

Second, the comments establish that adopting bill and keep for the exchange of CMRS-ILEC traffic would have substantial public interest benefits. For example, CMRS carriers and ILECs alike could avoid substantial traffic exchange monitoring and accounting costs, and the savings could be used by both carriers to provide new network infrastructure and services. Additionally, a uniform federal approach can effectively eliminate the potential for whipsawing CMRS carriers between federal rules and policies and a fifty-state patchwork of rules and policies that are attuned most directly to minimizing the impact of regulatory changes on ILEC residential end user rates. The Commission should not prevent carriers and consumers from realizing these and other important benefits while it addresses the far more jurisdictionally complex and time-consuming intercarrier compensation issues in this proceeding posed by proposals to meld CLEC and interexchange carrier compensation arrangements.

Third, the record of this proceeding demonstrates that there is a critical need for CMRS-ILEC interconnection reform. Nextel's own experience is that rural and smaller ILECs provide

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[8] *See Iowa Utilities Bd. v. FCC*, 135 F.3d 535 (U.S. App. 8th Cir. 1998), *aff'd in relevant part,* 525 U.S. 366 (1999); *Qwest Corp. v. FCC*, 252 F.3d 462, 466 (D.C. Cir. 2001) (concurring with the Eight Circuit's decision that section 332 provides the Commission with authority independent of the Telecommunications Act of 1996 to adopt section 51.703(b) and other rules governing LEC-CMRS interconnection).

CMRS carriers with interconnection on a "take it or leave it" basis, making any attempt at negotiating futile. CMRS carriers are having severe difficulty in establishing suitable interconnection arrangements because ILECs can insist on symmetrical compensation even when traffic flows are in rough balance. Further, ILECs continue to impose improper and anticompetitive charges on the termination of CMRS traffic to their networks, and some state commissions are effectively ignoring FCC requirements in favor of protecting ILEC financial interests.[9] Immediate action by the Commission is required to prevent CMRS carriers from being whipsawed between federal rules that promote competition and state commission actions that protect the access revenues of rural or small ILECs. CMRS providers must not be subjected to arbitrary, state-by-state requirements; the Commission would advance the cause of competition and reinforce the essential pre-requisite of sustainable facilities-based competition by immediate application of uniform CMRS-ILEC interconnection rules and policies.

Finally, a number of state commissions filed comments expressing concern about any FCC action requiring bill and keep for any interconnection arrangements subject to the Sections 251 and 252 state approval and arbitration process. The states' concerns revolve around the potential impact on ILEC residential end-user rates from replacing the one-way access charge

[9] The comments filed by rural ILECs and their trade groups suggest that these carriers are intent on avoiding uniform federal interconnection rules at all costs. Many, like the Missouri Small Telephone Company Group, assert that the benefits of bill and keep are overblown and the financial impact on ILEC access revenues and universal service would be devastating. *See* MoSTCG Comments at 12-15. They take an "it ain't broke, don't fix it" approach to the broad issue, and fail entirely to address the anticompetitive actions they have taken in Missouri to impose one-way access-type termination tariffs on CMRS traffic. Nextel discussed in its comments the history of this proceeding. *See* Nextel Comments at 11. Nextel's concerns that such actions might become widespread are confirmed by the comments filed by the Iowa Utilities Board, discussing the docket it has underway on the issue of MTA traffic scope and ILEC obligations to provide transit for indirect CMRS interconnection. Comments of the Iowa Utilities Board at 4.

revenues ILECs assess today with a no net payment regime.[10] However, this concern is not implicated by reforming the reciprocal compensation obligations that exist between CMRS carriers and ILECs, particularly because the net ILEC revenues from CMRS-ILEC interconnection constitutes only a minor portion of total interconnected telecommunications traffic.[11]

III. THE FCC SHOULD CONFIRM THE SCOPE OF ILEC OBLIGATIONS TO INTERCONNECT FOR THE EXCHANGE OF CMRS TRAFFIC

The Commission also should take the opportunity in this proceeding to confirm the scope of an ILEC's interconnection obligations with respect to CMRS traffic. For example, although the Commission has established the MTA as the geographic region in which a CMRS carrier can originate and terminate traffic and expect that this traffic will be subject to reciprocal compensation obligations with interconnecting ILECs,[12] SBC, Qwest and several rural ILECs suggest that an ILEC's reciprocal compensation obligations are limited if the ILEC does not have local facilities that are MTA-wide or facilities in a particular ILEC rate center.[13] Specifically, these commenters suggest that an ILEC may refuse to provide reciprocal treatment for any traffic that originates or terminates outside its landline network.

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[10] *See, e.g.*, Comments of the New York State Department of Public Service at 2.

[11] Commenters representing rural ILECs, in particular, suggest that bill and keep would result in substantial local service rate increases to offset the loss of access revenues. *See* Comments of the Western Alliance at 6-17; MoSTCG Comments at 14-15. However, even assuming these claims are accurate, the commenters do not separately evaluate the impact of CMRS bill and keep, nor do they recognize that access charges for intra-MTA CMRS traffic have been improperly assessed in the first instance.

[12] *See* 47 C.F.R. § 51.701(b)(2).

[13] *See* Comments of the Qwest Communications International, Inc. at 28-31; SBC Comments at 18-19; MoSTCG Comments at 10; Comments of the Michigan Exchange Carriers Association, Inc. at 34-36.

This reinterpretation of the FCC's rules is entirely unsupported and ignores the plain language of the rule. For purposes of reciprocal compensation, the FCC's rules define local telecommunications traffic to mean "[t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area . . . ."[14] Furthermore, in adopting the rule, the Commission noted its exclusive authority to define the relevant geographic area for CMRS reciprocal compensation and stated that while "[d]ifferent types of wireless carriers have different FCC-authorized licensed territories," the MTA "serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers."[15] The Commission was keenly aware that the geographic area it selected for CMRS reciprocal compensation purposes was significantly larger than a landline local calling area.[16]

The Commission must not allow this unilateral rule reinterpretation by ILECs to stand. Doing so would allow ILECs to impose on CMRS carriers significant and unnecessary facilities or transport charges to route traffic to the ILECs' preferred point of interconnection. Instead, the FCC should confirm that Section 51.701(b)(2) of the rules imposes reciprocal compensation obligations on ILECs with respect to all intra-MTA CMRS traffic, regardless of whether an ILEC maintains local facilities throughout the entire MTA.

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[14] 47 C.F.R. § 51.701(b)(2).

[15] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd. 15499, at ¶1036 (1996) ("*Local Competition Order*"), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC,* 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

[16] *See id.*

The Commission also should address the insistence by many ILECs and certain state commissions on direct interconnection arrangements with CMRS carriers, even when indirect interconnection is far more efficient in circumstances where a relatively small volume of traffic is exchanged.[17] The Commission has already recognized that there is no basis to require CMRS carriers to have direct interconnection arrangements with every single ILEC with which it may exchange traffic.[18] The Commission should ensure that indirect transit traffic arrangements remain a viable option for CMRS carriers by confirming that ILECs may not require direct interconnection as a condition of carrying CMRS traffic or exchanging traffic at reciprocal rates.

IV. THE FCC SHOULD REJECT BILL AND KEEP MODELS FOR CMRS-ILEC TRAFFIC THAT FAVOR ILEC NETWORKS

As discussed in the initial comments of Nextel and others, the FCC should adopt a presumption in favor of bill and keep for CMRS-ILEC interconnection compensation. Because bill and keep removes inefficiencies from the intercarrier compensation process, it will promote

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[17] One instance of this is illustrated by the Sprint PCS Petition for Declaratory Ruling regarding the interconnection practices of Brandenburg Telephone Company ("Brandenburg"). *See Petition for Order Directing Brandenburg Telephone to Provide Interconnection on Reasonable and Non-Discriminatory Terms* of Sprint Spectrum L.P., d/b/a Sprint PCS, at 12-14 (filed September 18, 2001) ("Petition"). Sprint PCS interconnects with Verizon in Elizabethtown, Kentucky and has two NXX codes rated in the Elizabethtown rate center. Brandenburg's Radcliff and Vine Grove, Kentucky exchanges are adjacent to Verizon's Elizabethtown exchange, and the Elizabethtown exchange is within the local calling area of the Radcliff and Vine Grove exchanges. As Sprint PCS demonstrates in its Petition, the traffic volumes between Sprint PCS and Brandenburg's Radcliff and Vine Grove exchanges are not large enough to justify a direct interconnection. Consequently, Sprint PCS proposed indirect interconnection using the existing trunk capacity between Radcliff and Elizabethtown. Brandenburg refused the request and demanded that Sprint PCS interconnect directly and pay the entire cost of the 15-mile trunk group connecting Elizabethtown and Radcliff. Sprint PCS's Petition demonstrates that inefficiencies result in cases where traffic volume is not large enough to justify direct interconnection.

[18] *See Local Competition Order* at ¶ 997 ("telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices").

competition. Indeed, bill and keep will make the highly competitive CMRS industry even more competitive because end user prices can reflect each carrier's own costs. However, the FCC should avoid adopting either theoretical model discussed in the *Notice* for dividing "inter-network" costs of physical interconnection because of they are far too generalized and fail to account for the market power of the ILEC. Further, application of these models to existing CMRS interconnection arrangements would impose additional unnecessary costs on CMRS carriers.

As explained in the comments of Verizon Wireless, neither "Central Office Bill and Keep" ("COBAK") nor "Bill Access to Subscribers-Interconnection Cost Split" ("BASICS") is an appropriate model for CMRS-ILEC interconnection. Both models present significant implementation difficulties, including definitional uncertainties and the need for substantial regulatory intervention, and are not competitively neutral when applied to CMRS-ILEC interconnection. For example, under the COBAK model, ILECs potentially could be responsible for transporting call only to a CMRS MSC switch, whereas CMRS carriers could be required to transport calls all the way to each and every LEC end office. CMRS carriers would face massive additional transport charges if the COBAK theoretical framework were applied, without absolutely no offsetting public benefit. The BASICS model has similar problems, as well as the inherent delay and regulatory uncertainty as the Commission or fifty state commissions struggle to establish what constitutes incremental interconnection facilities and costs.

If there were any doubt on this subject, it is dispelled by the economic research several commenters have provided to the Commission. Time Warner Telecom, for example, attached an analysis of COBAK from Dr. Joseph Farrell, a former Chief Economist at the Commission. Fundamentally, Farrell states that COBAK relies upon two special assumptions – symmetry of

marginal costs between networks and symmetry of demand between calling and called party – which are unlikely to be satisfied in practice. COBAK also depends upon the assumption that carriers' traffic sensitive retail markups will be equal, when in fact these markups depend on carrier marketing strategies and market power.[19] For these reasons, Farrell concludes that COBAK cannot and should not be the basis for a real-world interconnection framework.

If that were not convincing enough, Worldcom's comments contained an attachment from the former Commission economist, Patrick DeGraba, who authored the COBAK paper while working at the Commission. This paper states that any implementation of COBAK would have to account for the fact that ILECs control essential facilities and possess market power. DeGraba concludes that without appropriate constraints ILECs could use their market power in a variety of ways to disadvantage rivals.[20] Plainly, the Commission's generalized theories regarding interconnection are flawed in that they do not account in any way for the incentives of the near monopoly interconnector in negotiating interconnection arrangements.

As stated in its comments, Nextel's traffic flow is gradually approaching a balance of mobile-to-land and land-to-mobile traffic. In this situation, even the ILECs agree that the Commission can adopt a presumption in favor of bill and keep as the reasonable compensation rate for exchange of traffic. If the Commission establishes bill and keep as the presumptively reasonable default rate, then both parties will have to agree to any alternative arrangement. Setting up a default presumption is plainly within the Commission's legal authority.

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[19] *See* Comments of Time Warner Telecom at Exhibit 1, Analysis of Central Office Bill and Keep, Dr. Joseph Farrell and Dr. Benjamin E. Hermalin, August 2001 at 1.

[20] *See* Comments of Worldcom at Attachment Declaration of Patrick DeGraba, Charles Rivers Associates, Implementing Bill and Keep Intercarrier Compensation When Incumbent LECs Have Market Power, at 2.

V. THE FCC CANNOT PERMIT DISCRIMINATORY END USER PRICING OR TRANSPORT RATES UNDER THE GUISE OF "PRICING FLEXIBILITY"

In its comments, SBC proposes that it be granted "pricing flexibility" to recover its additional traffic sensitive costs of call termination from its end users if bill and keep is adopted.[21] This proposal raises concerns that CMRS bill and keep may be used as a pretext to establish discriminatory pricing on calls to CMRS or potentially to other carriers.[22] The Commission should reject out of hand any potential opportunity for anticompetitive ILEC price discrimination. SBC's proposal highlights a potentially serious problem with bill and keep: without sufficient regulatory oversight, the ILEC, which by virtue of its historic monopoly, will exploit its large "network" advantage over any competitor.

This same network advantage and overwhelming market power has allowed ILECs to impose unilaterally charges for functions that carriers typically provide on a reciprocal basis. For example, Nextel's comments raised the concern that some ILECs charge Nextel for Signaling System 7 ("SS7") functionality, despite the fact that Nextel provides the same functionality to the ILEC when traffic is exchanged. Any reform of CMRS-ILEC interconnection needs to prohibit ILECs from unilaterally charging for SS7 and other services when they are, in fact, reciprocally provided under an interconnection agreement.

Finally, as noted above, several CMRS commenters observed that, given the ubiquity of the ILEC's geographic network and the fact that CMRS carriers must in some cases rely on ILEC transit transport, the Commission must approach the regulation and pricing of transit

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[21] *See* SBC Comments at 31-32.

[22] Nextel's comments predicted that ILECs might be motivated to attempt to differentiate their pricing based on factors such as on-network or off-network calls. *See* Nextel Comments at 24. This type of price discrimination would be highly disruptive to the development of a competitive telecommunications market.

transport in the same manner as other essential elements intercarrier interconnection. Where ILECs are the only parties that have the capability of providing transit transport, their rates for this service should be cost based and in no instance should they be deregulated.

VI. CONCLUSION

For the all the foregoing reasons, Nextel respectfully requests that the Commission take action in this proceeding to promote true facilities-based competition by eliminating as much as possible the incentives and ability of an ILEC to insist on inefficient interconnection arrangements. Adoption of bill and keep as the default arrangements for the exchange of CMRS-ILEC traffic within an MTA best fosters the establishment of this relationship. Even with the establishment of bill and keep, however, the Commission may be called on to prevent

the institution of other inefficient or anticompetitive interconnection practices by ILECs against CMRS carriers.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

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Laura H. Phillips
Carlos M. Nalda

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

Leonard J. Kennedy
Senior Vice President and General Counsel
Joel M. Margolis
Senior Corporate Counsel-Regulatory
NEXTEL COMMUNICATIONS, INC.
2001 Edmund Halley Drive
Reston, VA 20191

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